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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/888,441

06/26/2001

Guy Tabacchi

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EXAMINER

WEBMAN, EDWARD J

ART UNIT

PAPER NUMBER

1616

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 09/888,441	<b>Applicant(s)</b> TABACCHI ET AL.	
	<b>Examiner</b> Edward J. Webman	<b>Art Unit</b> 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 03 May 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 14,20-25,27,28 and 33-35 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9,13,15-19,26 and 29-32 is/are rejected.
- 7) ☒ Claim(s) 10-12 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

The election of species requirement over claims 2-12 electing a constituent solvent, filed 8/13/02 is withdrawn.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 13, 15-19, 26, 29-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO/99/36445 (equivalent in English-US 6,197,287) in view of FR 97-04876 (English equivalent US 6,353,034).

US '287 teaches a composition with cosmetic applications comprising an oil phase, an aqueous phase, a water-in-oil emulsifier, an oil-in-water emulsifier, and 20-45% of a branched or crosslinked anionic polyelectrolyte comprising a strongly acidic monomer and a weakly acidic monomer (abstract). A copolymer of AMPS and acrylic acid crosslinked with methylenebisacrylamide is disclosed (Example 1 column 5). The water-in-oil emulsifier sorbitan oleate is specified (Example 1 column 5). The oil phase comprises a plant oil (column 3 lines 29-36). 25-40% water-in-oil emulsifiers and 75-60% oil-in-water emulsifiers are specified (column 3 lines 17-24). 15-40% oil phase is disclosed (column 3 lines 25-28). Chain-limiting agents are specified (column 3 lines 50-54).

US '034 teaches compositions comprising alkyl polyglycosides as emulsifiers (abstract). Emulsions with remarkable textural properties for use in the cosmetic sector are disclosed (column 3 lines 16-19). An oil phase of vegetable oil, including olive oil, is specified (column 5

Art Unit: 1616

lines 13-19). Synthetic polymer stabilizers, including crosslinked acrylic polymers, are disclosed (column 7 lines 1-16).

It would have been obvious to one of ordinary skill to add an alky polyglycoside to the composition of US '287 to achieve the beneficial effect of achieving remarkable textural properties in view of US '034. As to the claimed fatty acid esters, US '287 teaches a plant oil. The examiner takes notice under MPEP 2144.03 that olive oil comprises 83.5% glycerides of oleic acid and possesses emollient properties. It would have been an obvious to one of ordinary skill to use olive oil as the plant oil in US'287 to achieve the beneficial effect of olive oil's emollient properties in the disclosed cosmetic compositions. As to the claimed self-invertible inverse latex, it is argued that the obvious combination must be self-invertible because it is the same as that claimed.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-9, 13, 19, 26, 29-32 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-15 and 1-6, 10-18 of U.S. Patent No. 6,197,287 and 5,484,843 respectively. Although the conflicting claims are not identical, they are not patentably distinct from each other because the patented claims encompass the scope of the instant claims with regard to the solvent of the oil phase.

The examiner takes notice under MPEP 2144.03 that olive oil comprises 83.5% glycerides of oleic acid and possesses emollient properties. It would have been an obvious to one of ordinary skill to use olive oil as the plant oil in US '287 to achieve the beneficial effect of the olive oil's emollient properties in the disclosed cosmetic compositions.

Claims 1-9, 13, 15-19, 26, 29-32 are rejected. Claims 10-12 are objected to as dependent upon a rejected claim.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward J. Webman whose telephone number is 571-272-0633. The examiner can normally be reached on M-F from 8 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. Richter, can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

Art Unit: 1616

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
EDWARD J. WEBMAN  
PRIMARY EXAMINER  
GROUP 1